

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND/ODESSA DIVISION**

MCANALLY WILKINS, INC.
Plaintiff

vs.

JACOB JUNG
Defendant

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CIVIL ACTION NO.7:19-cv-259
(Jury Demanded)

NOTICE OF REMOVAL

COMES NOW JACOB JUNG (“JUNG”), Defendant in the above-captioned action, and hereby removes this civil action to the United States District Court for the Western District of Texas, from the 385th Judicial District Court of Midland County, Texas, Cause No. CV56053. This Removal is pursuant to Title 28 of the United States Code, sections 1332, 1441(b) and 1446. In support of this Notice of Removal, Jung states as follows:

Procedural History

1. Defendant Jung is an individual resident of Oklahoma, residing in Edmond, Oklahoma. Plaintiff, McAnally Wilkins, Inc. is a Texas corporation doing business in Midland, Texas.

2. Plaintiffs filed their Original Petition on October 2, 2019, in the 385th Judicial District, Midland County, Texas, Cause No. CV56053. Attached hereto is a certified true and correct copy of the state court file that includes Plaintiffs’ Original Petition and Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction filed in that action (“Original Petition”).

3. Plaintiffs, through their Petition, seek (a) relief for an alleged breach of contract by Jung; (b) a declaration related to an alleged breach of contract by Jung and remaining

contractual obligations of Plaintiff; (c) a Temporary Restraining Order (TRO); (d) a Temporary Injunction; and (e) a Permanent Injunction.

4. The TRO, Temporary Injunction, and Permanent Injunction seek to enjoin Defendants from the following:

- a. Directly or indirectly, on his own or in the for himself or on behalf of or in connection with any other person or entity, from engaging in or entering into the employment, in actual or potential competition in any manner whatsoever with the insurance sales and service business of MWI.
- b. Directly or indirectly, on his own or in the service of others, knowingly call upon, solicit, divert or attempt to solicit or divert the business or accounts of any of the policy holders, accounts or prospects of MWI.
- c. Directly or indirectly, on his own or in the service of others, employ any employee of MWI or solicit, divert, recruit or induce any employee of MWI to leave the employ of MWI, whether or not such employment is at will.
- d. Directly or indirectly, on his own or in the service of others knowingly induce or advise any service provider or representative of MWI to terminate or materially alter its relationship with MWI.

5. On October 2, 2019, the 385th District Court of Midland County, Texas, signed, entered, and filed an ex parte Temporary Restraining Order, and set a hearing on Plaintiff's Application for Temporary Injunction for October 15, 2019. Attached hereto is a true and correct copy of the Order.

6. On October 15, 2019, the District Court signed, entered, and filed an order Granting Temporary Injunction. Defendant had not appeared in the state court case at that time.

7. Plaintiffs' Original Petition does not include a jury demand.

8. Defendants request a jury trial of all issues so triable.

The Notice of Removal is Timely

9. Jung received service of citation and a copy of the Original Petition on October 3, 2019. Jung files this Notice of Removal within thirty (30) days of receipt of such citation and

Original Petition as required by 28 U.S.C. § 1446(b). No previous application for removal has been made. Therefore, this action is timely.

Statement of Jurisdiction

10. A civil action filed in a state court may be removed to federal court if “the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . . [c]itizens of different States[.]” 28 U.S.C.S. § 1332(a)(1). *See also* 28 U.S.C.S. § 1332(c)(1) (“For the purposes of this section and section 1441 of this title [28 USCS § 1441] . . . a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business[.]”); 28 U.S.C.S. § 1441(b).

Basis for Removal (Diversity Jurisdiction)

11. Jung is the sole Defendant named in the above styled cause and files this removal. There are no other Defendants named. Pl’s Original Pet. at 1. Therefore, no consent to removal is required.

12. Jung is an individual resident of Oklahoma, residing in Edmond, Oklahoma. *Id.* at 2.

13. “Plaintiff, McAnally Wilkins, Inc. (“MWT”), is a Texas corporation doing business in Midland County at 110 W Louisiana Ave., Suite 150, Midland, Texas 79701.” *Id.* at 1.

14. As stated in Plaintiff’s Original Petition, the current amount in controversy or relief sought by Plaintiff exceeds \$75,000.00. “Plaintiff seeks monetary relief over \$200,000 but not more than \$1,000,000.” *Id.*

15. Therefore, the requirements for diversity jurisdiction of the U.S. District Court for

the Western District of Texas, as stated in Title 28 of the United States Code, sections 1332 and 1441(b), are satisfied.

Procedural Issues

16. No other proceedings, other than the state court action being removed, involve subject matter that comprises a material part of the subject matter or the operative facts of the captioned action.

17. Written notice of the filing of this Notice of Removal will be promptly filed with the District Clerk of Midland County, Texas.

18. Pursuant to 28 U.S.C. § 1446(a) a “a copy of all process, pleadings, and orders served upon such defendant or defendants in such action” is attached. The materials provided with this Notice of Removal constitute the entire state court file and are supplemented in accordance with Western District of Texas Local Rules, as further described below:

- a. a completed Civil Cover Sheet complying with Local Rule CV-3(a);
- b. a completed supplemental cover sheet;
- c. an index of all documents filed in state court, including date of filing;
- d. a certified copy of the state court docket sheet;
- e. each document filed in the state court action except discovery material; and
- f. a certificate of interested persons.

Conclusion

19. Plaintiff’s claims are subject to federal jurisdiction pursuant to 28 U.S.C. §§ 1441(b) and 1332(a), and this case is properly removed from the 385th Judicial District Court of Midland County, Texas, to the United States District Court for the Western District of Texas.

20. All additional procedural and substantive requirements for this Notice of Removal are also satisfied, including contemporaneous filing of a Notice to State Court of this Notice of Removal.

Prayer

WHEREFORE, Defendant JACOB JUNG gives notice that Cause No. CV56053 in the 385th Judicial District Court of Midland County, Texas, is removed to the United States District Court for the Western District of Texas, and request that this Court retain jurisdiction for all further proceedings.

Respectfully submitted,

*McCleskey, Harriger,
Brazill & Graf, L.L.P.*

/s/ William P. Lane
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Attorneys for Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 4th day of November, 2019, that a true and correct copy of the foregoing instrument was submitted electronically with the Clerk of the Court for the U.S. District Court, Western District of Texas, Midland/Odessa Division, using the CM/ECF of the Court.

/s/ William P. Lane
WILLIAM P. LANE

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Michael J. Kuykendall

Attorneys for Plaintiff

CERTIFICATE OF NOTICE

The undersigned hereby certifies that on this 4th day of November, 2019, a copy of the Notice of Removal of this action was forwarded to the Clerk of the 385th Judicial District Court of Midland County, Texas for filing. A copy of this Notice of Removal was attached to the Notice sent to the state court.

/s/ William P. Lane
WILLIAM P. LANE